BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

MARK STEVENS	)	
Claimant	)	
VS.	)	
	)	Docket No. 219,071
THE BOEING COMPANY	)	
Respondent	)	
AND	)	
	)	
AMERICAN MANUFACTURERS MUTUAL INS. CO.	)	
Insurance Carrier	)	

ORDER

Respondent appeals from the preliminary hearing Order of January 21, 1997, wherein Administrative Law Judge John D. Clark granted claimant benefits, finding that claimant had provided respondent statutory notice of claimant's accident pursuant to K.S.A. 44-520, and timely written claim pursuant to K.S.A. 44-520a.

ISSUES

(1) Whether respondent had notice of accident pursuant to K.S.A. 44-520.

(2) Whether written claim pursuant to K.S.A. 44-520(a) was timely submitted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds, for purposes of preliminary hearing, the Order of Administrative Law Judge John D. Clark should be affirmed.

Claimant is a long-term employee of respondent, working in both the paint shop and chemical lab. In the fall of 1995 claimant was transferred out of the chemical lab and back to the paint shop during a strike. Claimant worked in the paint shop from October through December 1995, during which time he developed significant problems in his upper extremities. Claimant discussed these problems on several occasions with both his acting supervisor, Daniel Thomas, and his lab supervisor, Greg Young. Claimant's contention that he discussed his symptoms with his supervisors on several occasions is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy. Anderson v. Kinsley Sand and Gravel Inc., 221 Kan. App. 2d 191, 558 P.2d 146 (1976)

Claimant returned to his chem lab duties in December 1995 and continued to experience symptoms thereafter. He discussed his problem with his supervisor, Greg Young, and was told to report to Central Medical. Central Medical referred claimant to his regular physician. Claimant was diagnosed with bilateral carpal tunnel syndrome in early 1996.

Respondent contends claimant did not provide notice as is required by K.S.A. 44-520. K.S.A. 44-520 states in pertinent part:

> "Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary."

As stated above, claimant contacted his supervisors on more than one occasion, discussing the symptomatology and was referred to Boeing Central Medical. The Appeals Board finds that the respondent had actual knowledge of claimant's accident and, as such, the requirement for the giving of notice under K.S.A. 44-520 has been satisfied.

Respondent further contends claimant has failed to provide written claim as required by K.S.A. 44-520a. The pertinent part of K.S.A. 44-520a states as follows:

> "(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident,

> or in cases where compensation payments have been suspended within two hundred (200) days after the date of last payment of compensation; . . ."

It is acknowledged by the parties that the earliest written claim issued by claimant was November 22, 1996, when claimant's attorney submitted written claim to the respondent. Claimant further filed an E-1 on November 25, 1996, with the Division of Workers Compensation.

In order for claimant's claim to be timely filed under K.S.A. 44-520a, either claimant's date of accident or the payment of compensation must have occurred within 200 days of November 22, 1996. At the preliminary hearing held January 21, 1997, claimant testified that his symptomatology continued after December 1995, when he was transferred back into the lab. Claimant acknowledged that his condition did not get any worse, but also testified that his condition did not improve. When filing the E-1 form with the Division of Workers Compensation, claimant has alleged an accident date from October 1995 to the present.

Date of accident has been the focal point of several recent Court of Appeals cases. In Berry v. Boeing Military Airplane, 20 Kan. App. 2d, 220, 885 P.2d 1261, (1994), the Court of Appeals established a bright line rule in deciding the dates of accident in carpal tunnel syndrome cases. In Berry, the Court of Appeals found that the "last day of work" is the date of injury or occurrence for purposes of carpal tunnel syndrome.

In Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995), the Court of Appeals further discussed dates of accident when dealing with upper extremity and micro trauma situations. In Condon, as in Berry, the claimant suffered from a condition the origin of which could not be determined. In Condon claimant lost her job as a result of a general layoff and not due to any medical condition. The Court of Appeals found that the date of injury in micro trauma situations would not always be the last day worked. The Condon Court affirmed the Workers Compensation Board's finding that claimant suffered accidental injury prior to July 1, 1993, as claimant had received restrictions from her physician prior to that date, the restrictions were intended to prevent further injury, and any incidents occurring after July 1, 1993, would have been insignificant and not changed claimant's limitations or abilities to any extent.

In considering the date of accident in this matter, respondent argues the December 1995 date would be appropriate, the time claimant was transferred away from the paint shop and back to the lab as claimant's condition did not worsen after that date. Claimant, on the other hand, contends that his ongoing symptomatology while working in the lab indicated ongoing micro trauma, resulting in a later injury date. For purposes of written claim, the Appeals Board finds the parties arguments to be irrelevant. If the Appeals Board adopts the respondent's contention that the date of accident is December 1995, then, under K.S.A. 44-520a, claimant would normally have 200 days from that date within which to submit written claim. However, K.S.A. 44-557 obligates an employer to prepare an

accident report within 28 days after receiving knowledge of an accident. Failure to do so extends the written claim time to one year from the date of accident or the last date on which disability compensation was paid. Accepting respondent's contention that December 1995 is the date of accident, accepting the stipulation that claimant provided written claim in November 1996, and absent a showing that an accident report was filed by respondent, the Appeals Board finds under K.S.A. 44-557 that the written claim time limit is extended to one year and claimant's written claim would be timely.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark, dated January 21, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Bruce L. Stewart, Wichita, KS
Eric K. Kuhn, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director